



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



North Country Environmental Services, Inc.
3 Pitkin Court
Montpelier, VT 05602

Re: Trudeau Road, Bethlehem, Landfill
Lined Solid Waste Landfill
Permit No. DES-SW 00-003

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE**

**No. AF 03-011
MAY 12, 2003**

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to North Country Environmental Services, Inc., pursuant to RSA 149-M and Env-Wm 100-300, 2100 et seq. The Division is proposing that fines totaling \$500.00 be imposed against NCES for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. North Country Environmental Services, Inc. is a Corporation registered to do business in New Hampshire having a mailing address of 3 Pitkin Court, Montpelier, Vermont 05602.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 149-M, DES regulates the Management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 - 300, 2100 et seq. (Solid Waste Rules") to implement this program.
2. Pursuant to RSA 149-M:16, the Commissioner is authorized to impose fines up to \$2,000 per violation for violations of RSA 149-M or rules adopted thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. NCES owns and operates a landfill on Trudeau Road in Bethlehem, NH ("the Landfill"). The landfill is subject to the requirements of RSA 149-M and the Solid Waste Rules.
4. NCES holds solid waste facility permits DES-SW-87-022, DES-SW-89-009, DES-SW-SP-00-003 and DES-SW-SP-03-002 for Stage I, Stage II, Stage III and Stage IV respectively. Construction and operating approvals have been issued for Stage I, Stage II and Stage III.

5. Pursuant to Env-Wm 2805.04(b), as a condition of the permit, the facility shall operate in accordance with the last approved operating plan of record. The operating plan for Stage III was approved by Type II permit modification on December 21, 2000 and modified on December 10, 2001 and December 27, 2001.

6. Section 3.3 of the operating plan states in part "Once vehicles are in the disposal area, compactor operators observe the waste as the vehicles discharge their load onto the working face. As refuse is spread at the working face, operators are to look for unacceptable materials which may have been placed in the load."

7. In September of 2002 or thereabouts, thousands of American flags destined for a ceremonial burning were allegedly disposed at the Landfill.

8. When questioned about the flags at a public hearing held on October 8, 2002, NCES responded there were too many machines on the Landfill at the time and the operator did not see the flags.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINE

1. NCES has violated Env-Wm 2805.04(b) by operating the Landfill as quoted by NCES in III.8 above when it is required to operate the landfill per III.6 above. For the violation identified in IV.1, above, Env-C 612.13(b) specifies a fine of \$500.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than June 11, 2003 using the enclosed colored form.

1. If NCES would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If NCES chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

3. If NCES wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate NCES's interest in settling.

NCES is not required to be represented by an attorney. If chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that NCES committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that NCES committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that NCES proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** NCES did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** NCES did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, NCES was making a good faith effort to comply with the requirement that was violated.
3. NCES has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to NCES's case which was not known to the Division at the time the fine was proposed.


*****IMPORTANT NOTICE*****

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that North Country Environmental Services, Inc. committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is NCES's opportunity to present testimony and evidence that NCES did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If NCES has any evidence, such as photographs, business records or other documents, that believes show that NCES did not commit the violation(s) or that otherwise support NCES's position, NCES should bring the evidence to the

hearing. NCES may also bring witnesses (other people) to the hearing to testify on NCES's behalf.

If NCES wishes to have an informal meeting to discuss the issues, NCES must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If NCES has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.


Philip J. O'Brien, Ph.D., P.G., Director
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2002*)

cc: Mark Harbaugh, DES Legal Unit
Susan Weiss Alexant, DES Hearings and Rules Attorney
Mike Guilroy, DES WMD
Town of Bethlehem

***** RETURN THIS PAGE ONLY *****

**NORTH COUNTRY ENVIRONMENTAL SERVICES, INC.,
IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN June 11, 2003

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of North Country Environmental Services, Inc.

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I request to have a **prehearing conference** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of North Country Environmental Services, Inc.

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$500.00 paid to "Treasurer, State of New Hampshire" is enclosed.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:

Michael Sclafani, Legal Assistant

Department of Environmental Services ~ Legal Unit

6 Hazen Drive, P.O. Box 95

Concord, NH 03302-0095

* If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.